

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1126 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JAYESHBHAI PURSHOTTAMBHAI PATEL

Versus

VIRENDRAKUMAR KANUBHAI PATEL

Appearance:

MR VIJAY H PATEL for Petitioner

MR BD KARIA for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/04/98

ORAL JUDGEMENT

1. Heard Mr.Asim Pandya for Mr.V.H.Patel appearing on behalf of petitioner. Rule. Ld.APP-Mr.A.J.Desai appears and waives service of rule on behalf of respondent No.2-State. Mr.Karia who initially appeared in response to show cause notice on behalf of respondent No.1 waives service of rule on behalf of respondent No.1. By consent of learned advocates appearing for parties

matter is finally heard.

2. The petitioner has challenged the legality and propriety of the order passed by the Ld.Sessions Judge, Anand, dated 30.4.97 in the proceedings of Criminal Revn.Appln.No.112/95.

3. The present petitioner along with one Dilip Ambalal Tailor and Bhailalbai Punambhai Thakore were sought to be prosecuted by the respondent No.1 for having committed offences made punishable under sections 406, 420, 468, 114 and 120 B IPC. That Criminal Complaint was filed in the court of Ld.JMFC, Anand which was referred to Anand Town PS under section 156(3) Cr.P.C. for investigation by Ld.JMFRC vide order dated 26.7.93. That the investigation officer after investigation submitted his report and claimed "C" summary. That the Ld.JMFC registered the matter as Court Enquiry Case No.147/93 and issued notice to present respondent who was original complainant. That after hearing the parties, vide order, dated 23.11.1994 the Ld.JMFC, Anand accepted the "C" summary and rejected the complaint.. That the present respondent being aggrieved and dissatisfied by the order of the Ld.JMFC, Anand, dated 23.11.1994 filed Criminal Revision Application No.112/95 which is decided by the Ld.Sessions Judge vide impugned order, dated 30.4.97 whereby the Ld.Sessions Judge has reversed the order of the Ld.JMFC, Anand, dated 23/11/1994 and has forwarded the papers to Ld.JMFC for further proceeding in accordance with law. That the said order is challenged in the present proceedings.

4. Ld.Advocate Mr.Pandya appearing for petitioner has taken me through the impugned order and also the order passed by the Ld.JMFC, dated 23.11.1994. The impugned order is produced on record vide page 57 to 62 while the order of the Ld.JMFC is produced vide pages 22-50.

5. That during the investigation it was revealed that the present respondent had suppressed the material fact in his complaint filed to the effect that the petitioner who had entered into an agreement to sale of land with the respondent and had accepted the earnest money and had returned the said earnest money with interest and costs and the said agreement to sale was cancelled. That the investigation officer also found that the fact stated in the agreement to sale regarding the ownership of the land and giving of Power of Attorney to the present petitioner by the owner of the land were found to be correct. Thus, as the present respondent was

not defrauded by the petitioner and the entire amount has been returned at the time of cancellation of agreement to sale the respondent No.1 had no cause to file any complaint. That the Ld.JMFC, Anand has rightly come to conclusion that said report of investigation officer is required to be accepted in the facts and circumstances of the case. However, Ld.Sessions Judge while deciding the criminal revision application No.112/95 has observed in para 14 that in the transaction between the petitioner and the respondent No.1 there are suspicious circumstances of cheating and thereby some more enquire is necessary. Only on said reasoning the Ld.Sessions Judge appears to have interfered with the order passed by the Ld.JMFC and has reversed the same. In my opinion, the Ld.Sessions Judge has grossly erred by interfering with the said order as the order was just, proper, fair and based on material facts collected by the investigation officer. That the Ld.Sessions Judge has failed to consider the facts collected by the Investigation Officer during the investigation and reasons assigned by the Ld.JMFC while accepting the "C" summary. Therefore the order passed by the Ld.Sessions Judge is devoid of any reason muchless any compelling reason to reverse the order of the Ld.JMFC Anand, dated 23.11.1994. Hence, I hold that the impugned order being without application of mind and contrary to facts produced on record deserves to be set aside and quashed.

6. On the basis of foregoing discussion, the Spl.Cr.A No.1126/97 is hereby allowed. The impugned order of Ld.Sessions Judge, Anand, Dated 30.4.1997 passed in Cri.Revn.Appln.No.112/95 is hereby quashed and set aside. The order of the Ld.JMFC, Anand, dated 23.11.1994 is hereby confirmed. Rule is made absolute accordingly. No costs.

...